IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

ORDER

S.B.CRIMINAL MISC. PETITION NO. 436/2003
(Shanti Vs. Tarachand)

Date of Order : 24/08/2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. B.K.Vyas, for the petitioner.
Mr. M.K.Garg for the non-petitioner.

BY THE COURT:-

By the instant criminal misc. petition under Section 482 Cr.P.C., the petitioner has challenged the order dated 13.03.2003 passed by Special Judge, SC/ST (Prevention of Atrocities) Act Cases, Bikaner (for short 'the revisional court' hereinafter) whereby the revision petition filed by the petitioner against the order dated 04.11.1999 passed by Additional Chief Judicial Magistrate No.1, Bikaner (for short 'the trial court' hereinafter), was dismissed.

I have heard learned counsel for the parties. Carefully gone through the order passed by the trial court as well as by the revisional court.

The petitioner filed an application under Section 125 Cr.P.C., seeking monthly allowance of maintenance for herself as

also for her two minor children namely Dinesh and Mahesh. The trial court by order dated 04.11.1999 allowed the application filed on behalf of two minors Dinesh and Mahesh and granted monthly allowance of maintenance @ Rs.400/- per month in favour of each of the minors, however, declined to grant maintenance in favour of the petitioner. The petitioner preferred a revision petition against that order. The revisional court on examination of the record of the court below came to the conclusion that it was the petitioner herself who without reasonable and probable cause deserted the non-petitioner and therefore, she is not entitled for maintenance.

I have carefully gone through the statement of the petitioner as also the witness produced by her AW-2 Asha. From the statement of AW-2 Asha, it is more than clear that the non-petitioner made an attempt to take the petitioner at his house and maintain her, but it was the petitioner who declined to go with the non-petitioner and insisted that the non-petitioner should come and reside with her at Gangashahar. The non-petitioner specifically came with a plea that he has made sincere efforts to bring the petitioner and maintain her, but she along with two minor sons went to her parent's house and have been insisting to live there and therefore, the petitioner has deserted him without any reasonable and probable cause. The trial court

as well as the revisional court found that even from the evidence produced by the petitioner, it has been established that the petitioner and AW-2 Asha want that non-petitioner should come and live with the petitioner at Sardarshahar at his in-laws house which the non-petitioner did not want. In the circumstances, therefore, in my view, both the courts below rightly concluded that the it was the petitioner who deserted the non-petitioner and therefore, not entitled for maintenance.

The petition has no force and is therefore, dismissed.

(H.R.PANWAR),J.

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